

This Opinion is Not a
Precedent of the TTAB

Hearing: November 10, 2021

Mailed: February 17, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

American Marriage Ministries

v.

Universal Life Church Monastery Storehouse

Opposition No. 91237315

Nancy V. Stephens, Benjamin J. Hodges, and Kelly A. Mennemeier of Foster Garvey
PC for American Marriage Ministries.

Michael P. Matesky, II of Matesky Law PLLC
for Universal Life Church Monastery Storehouse.

Before Wellington, Lykos, and English,
Administrative Trademark Judges.

Opinion by English, Administrative Trademark Judge:

Applicant, Universal Life Church Monastery Storehouse, seeks registration on the
Principal Register of the standard character mark GET ORDAINED for:

On-line retail store services featuring clothing in the nature of shirts,
hats, and stoles, stationery, business cards, bumper stickers, license
plate holders, badges, pens, pins, musical sound recordings, bookmarks,
bread, aromatic oil, portfolios, and publications in the nature of books,
hand-outs, workbooks, manuals, brochures, and newsletters in the fields
of religion, spirituality, marriage, law, and management in
International Class 35; and

Conducting religious ceremonies; ecclesiastical services, namely,
ordaining ministers to perform religious ceremonies; providing a website

featuring information about religious belief systems in International Class 45.¹

In its notice of opposition, Opposer alleges that the applied-for mark is generic, fails to function as a mark, and is merely descriptive.²

In its answer, Applicant denies the salient allegations in the notice of opposition.³

The case is fully briefed.⁴ A hearing was held on November 10, 2021. For the reasons explained below, the opposition is sustained on the ground that GET ORDAINED fails to function as a mark for Applicant's services and, in the alternative, is merely descriptive and has not acquired distinctiveness. We do not reach Opposer's claim that GET ORDAINED is generic for Applicant's services.

¹ Application Serial No. 87430729; filed April 28, 2017 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), alleging first use and first use in commerce on November 17, 2016 for the services in International Class 35 and first use and first use in commerce on July 10, 2011 for the services in International Class 45.

² 1 TTABVUE. The ESTTA coversheet to the notice of opposition identifies two additional grounds for opposition, namely, fraud and that "[t]he mark comprises matter that, as a whole, is functional" under Trademark Act Section 2(e)(5), 15 U.S.C. § 1052(e)(5). *Id.* at 1-2. In an August 14, 2018 order, the Board struck the fraud claim as insufficiently pleaded and noted that a claim of functionality under Trademark Rule 2(e)(5) was not pleaded and would be futile. 13 TTABVUE 2-5.

Citations to the record reference TTABVUE, the Board's online docketing system. The number preceding "TTABVUE" corresponds to the docket entry number; the number(s) following "TTABVUE" refer to the page number(s) of that particular docket entry. *See Turdin v. Trilobite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014). Citations to the record of the involved application are to the Trademark Document Retrieval (TSDR) database by page number in the downloadable .pdf format.

³ Applicant also asserted certain "affirmative defenses." Applicant's assertion that Opposer "fail[ed] to plead fraud with particularity" is moot as the Board struck this claim on August 14, 2018. 13 TTABVUE 5. Applicant did not further pursue "failure to state a claim" or "unclean hands" so these defenses are waived. "Lack of standing" is merely an amplification of Applicant's denials and "Applicant's good faith" is not relevant to the claims pleaded here.

⁴ As set forth in the Board's August 10, 2021 order, Opposer's operative main brief is at 88 TTABVUE. In addition, we have considered only Opposer's corrected rebuttal brief at 97 TTABVUE.

I. Evidentiary Objections and Record⁵

A. Evidentiary Objections

Applicant objects to the “expert opinion testimony” of Messrs. Yoshioka and King “regarding analysis of Google data and third-party understanding of [the] ‘GET ORDAINED’ trademark because [Opposer] did not properly disclose such testimony as required under the Federal Rules of Civil Procedure or establish its admissibility under the Federal Rules of Evidence.”⁶ Applicant also objects to portions of Mr. Wall’s testimony as speculative and raises additional objections to Applicant’s testimony and exhibits on grounds of hearsay, lack of personal knowledge and foundation.⁷

Messrs. Yoshioka and King are fact witnesses. Accordingly, while we have considered the entirety of their testimony depositions, we give due weight to those fact-based statements made on personal knowledge and disregard those lacking foundation, constituting hearsay, or consisting of mere (expert) opinion. The same is

⁵ In its rebuttal brief, Opposer asserts that three of Applicant’s testimony depositions are untimely because they were filed with the Board after Opposer submitted its trial brief. 97 TTABVUE 10. However, Applicant’s rebuttal depositions are not untimely.

Trademark Rule 2.125(b) provides that the transcript of a testimony deposition must be **served** on the opposing party within thirty days after the deposition is completed, 37 C.F.R. § 2.125(b), while Trademark Rule 2.123(f)(2) requires only that the transcript be **filed** with the Board “promptly.” 37 C.F.R. § 2.123(f)(2). The Board interprets “promptly” filed as meaning any time prior to the submission of the case for final decision. *Grote Indus., Inc. v. Truck-Lite Co., LLC*, 126 USPQ2d 1197, 1201 (TTAB 2018) (copies of oral testimony transcripts may be filed with the Board at any time before the case is submitted for final decision), *complaint filed*, No. 18-CV-599-LJV-MJR (W.D.N.Y May 4, 2018).

Opposer did not assert that Applicant failed to timely serve the deposition transcripts, and Applicant “promptly” filed the transcripts with the Board before the case was submitted for final decision.

⁶ Applicant’s Brief, 95 TTABVUE 46.

⁷ *Id.* at 43, 48.

true for all of the testimony introduced in this proceeding. We further note that we will not substitute the opinion of a witness for our evaluation of the facts. *Edwards Lifesciences Corp. v. VigiLanz Corp.*, 94 USPQ2d 1399, 1402 (TTAB 2010).

We do not make a ruling on Applicant's objections to the exhibits to the Wall, Yoshioka and King Depositions as the exhibits are not outcome determine and we have not relied on them in reaching our decision. *See, e.g., Kohler Co. v. Baldwin Hardware Corp.*, 82 USPQ2d 1100, 1104 (TTAB 2007) (“[W]e see no compelling reason to painstakingly go through all of the objections one by one except insofar as they relate to the outcome determinative testimony and evidence.”).

B. The Record

The record includes the pleadings, and by operation of law, the file of Applicant's involved application.⁸ Trademark Rule 2.122(d), 37 C.F.R. § 2.122(d).

In addition, Opposer introduced:⁹

1. A notice of reliance on:

- Pages from the USPTO file history for Opposer's Registration No. 4887624 for the mark AMERICAN MARRIAGE MINISTRY;¹⁰

⁸ Accordingly, it was unnecessary for Opposer to file a copy of the file under notice of reliance. 39 TTABVUE 14-56.

⁹ Opposer filed numerous submissions with errors, omissions, duplicate pages, and out-of-order exhibits increasing the time and effort the Board expended in considering the merits of this case. In any future proceedings, Opposer and its counsel are cautioned to carefully review all submissions before filing to make sure they are accurate, complete and non-duplicative. *See RxD Media, LLC v. IP Application Dev. LLC*, 125 USPQ2d 1801, 1803 (TTAB 2018) (“Judges are not like pigs, hunting for truffles buried in briefs.”) (internal quotations omitted) *aff'd*, 377 F. Supp. 3d 588 (E.D. Va. 2019), *aff'd*, 986 F.3d 361, 2021 USPQ2d 81 (4th Cir. 2021).

¹⁰ 39 TTABVUE 57-101; 44 TTABVUE 5-43; 78 TTABVUE 6.

- Dictionary definitions for the words “get” and “ordain[ed]”;¹¹
- Online articles, blogposts, and printouts from third-party social media pages using “get ordained”;¹²
- Screenshots from Opposer’s website theamm.org on September 9, 2020¹³ and November 18, 2019;¹⁴
- Screenshots from “Applicant’s” websites;¹⁵
- Opposer’s first set of interrogatories and Applicant’s responses and supplemental responses thereto;¹⁶
- Opposer’s first set of requests for admission and Applicant’s responses thereto;¹⁷
- Applicant’s supplemental written responses to Opposer’s first set of document requests;¹⁸
- Excerpts from the combined personal and 30(b)(6) deposition of Dallas Goschie, taken on January 18, 2019;¹⁹ and

¹¹ 40 TTABVUE 2-4 (MERRIAM-WEBSTER DICTIONARY); 79 TTABVUE 22-28 (THE AMERICAN HERITAGE DICTIONARY).

¹² 40 TTABVUE 6-50; 41 TTABVUE 2-46; 43 TTABVUE 2-46, 312-359; 44 TTABVUE 44-194.

¹³ 43 TTABVUE 47-58.

¹⁴ 80 TTABVUE 2-15.

¹⁵ 43 TTABVUE 59-83.

¹⁶ 43 TTABVUE 84-132.

¹⁷ 43 TTABVUE 133-144. We have considered only Applicant’s admissions to Opposer’s requests for admission. *Life Zone Inc. v. Middleman Grp. Inc.*, 87 USPQ2d 1953, 1957 n.10 (TTAB 2008) (denials of requests for admission not admissible; the denial of a request for admission establishes neither the truth nor the falsity of the assertion, but rather leaves the matter for proof at trial).

¹⁸ 80 TTABVUE 16-23. We have considered Applicant’s responses to document requests only to the extent Applicant has responded that there are no responsive documents. *City Nat’l Bank v. OPGI Mgmt. GP Inc./Gestion OPGI Inc.*, 106 USPQ2d 1668, 1674 n.10 (TTAB 2013) (responses to document requests are admissible solely for purposes of showing that a party has stated that there are no responsive documents).

¹⁹ 79 TTABVUE 2-8.

- Excerpts from the combined personal and 30(b)(6) deposition of George Freeman, taken on January 16, 2019;²⁰
- 2. September 4, 2020 Testimony Deposition of Dylan Wall, a minister of Opposer and the Vice President of Opposer's church board;²¹
- 3. September 10, 2020 Testimony Deposition of Glen Yoshioka, Opposer's President;²²
- 4. September 11, 2020 Testimony Deposition of Lewis King, Opposer's Executive Director;²³
- 5. September 9, 2020 Testimony Deposition, with exhibits, of Dallas Goschie, Applicant's Operations Manager;²⁴
- 6. September 10, 2020 Testimony Deposition of Brian Wozeniak, Chief Technology Officer of Applicant;²⁵
- 7. September 11, 2020 Testimony Deposition, with exhibits, of George Freeman, President and Presiding Chaplain of Applicant;²⁶
- 8. January 11, 2021 Cross-Examination Testimony Deposition, with exhibits, of Brian Wozeniak;²⁷
- 9. January 11, 2021 Cross-Examination Testimony Deposition, with exhibits, of Dallas Goschie;²⁸
- 10. January 12, 2021 Cross-Examination Testimony Deposition, with exhibits, of George Freeman;²⁹ and

²⁰ 79 TTABVUE 9-21.

²¹ 69 TTABVUE.

²² 74 TTABVUE.

²³ 73 TTABVUE.

²⁴ 72 TTABVUE.

²⁵ 70 TTABVUE.

²⁶ 71 TTABVUE.

²⁷ 84 TTABVUE (redacted); 82 TTABVUE (confidential).

²⁸ 85 TTABVUE.

²⁹ 86 TTABVUE.

11. January 29, 2021 Rebuttal Testimony Deposition of Lewis King.³⁰

Defendant introduced:

1. A Notice of reliance on:

- Merriam-Webster online dictionary definitions for the word “get”;³¹
- Dictionary.com dictionary definitions for the word “ordain”;³²
- Printouts from several online dictionaries reflecting the absence of a definition for the words “get ordained”;³³
- Screenshots from Google Books for an excerpt from the book DUNE MESSIAH by Frank Herbert;³⁴
- Printouts from the Office’s Trademark Electronic Search System (TESS) for third-party GET-formative marks;³⁵
- Screenshots from UrbanDictionary.com, Slang.org, and Wordnik.com and a printout from Wikipedia.com, “showing the definitions of certain terms used in the ‘GET _____’ trademarks reflected in the submitted TESS printouts”;³⁶
- Applicant’s first set of interrogatories, Opposer’s responses thereto and Opposer’s combined supplemental responses to Applicant’s first set of document requests and interrogatories;³⁷

³⁰ 83 TTABVUE.

³¹ 66 TTABVUE 8-21.

³² 66 TTABVUE 22-28.

³³ 66 TTABVUE 29-45.

³⁴ 66 TTABVUE 46-52.

³⁵ 66 TTABVUE 53-109.

³⁶ 66 TTABVUE 110-115.

³⁷ 66 TTABVUE 116-139.

- Applicant's first set of document requests and Opposer's written responses thereto;³⁸
 - Excerpts from the combined personal and 30(b)(6) deposition of Dylan Wall, taken January 25, 2019;³⁹ and
 - Excerpts from the January 24, 2019 discovery deposition of Glen Yoshioka;⁴⁰
2. December 15, 2020 Testimony Declaration of George Freeman, with exhibits;⁴¹
 3. December 15, 2020 Testimony Declaration of Brian Wozeniak, with exhibits;⁴²
 4. December 15, 2020 Testimony Declaration of Dallas Goschie, with exhibits;⁴³
 5. December 7, 2020 Testimony Deposition of Lewis King;⁴⁴
 6. December 7, 2020 Testimony Deposition of Glen Yoshioka, with exhibits;⁴⁵ and
 7. December 10, 2020 Testimony Deposition of Dylan Wall.⁴⁶

³⁸ 66 TTABVUE 140-161. We have considered Opposer's responses to document requests (including its supplemental responses at n.64) only to the extent Opposer has responded that there are no responsive documents. *City Nat'l Bank*, 106 USPQ2d at 1674 n.10.

³⁹ 66 TTABVUE 162-179.

⁴⁰ 66 TTABVUE 180-192.

⁴¹ 62 TTABVUE.

⁴² 63 TTABVUE (confidential); 64 TTABVUE (redacted).

⁴³ 65 TTABVUE.

⁴⁴ 91 TTABVUE.

⁴⁵ 93 TTABVUE.

⁴⁶ 90 TTABVUE.

II. Entitlement to a Statutory Cause of Action

Entitlement to a statutory cause of action must be established in every inter partes case.⁴⁷ See *Australian Therapeutic Supplies Pty. Ltd. v. Naked TM, LLC*, 965 F.3d 1370, 2020 USPQ2d 10837, at *3 (Fed. Cir. 2020), *cert. denied*, ___ U.S. ___ (2021) (citing *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 109 USPQ2d 2061, 2067 n.4 (2014)). A party in the position of plaintiff may oppose an application or petition to cancel a registration when such opposition is within the zone of interests protected by the statute, 15 U.S.C. §§ 1063, 1064, and the plaintiff has a reasonable belief in damage that is proximately caused by registration of the mark. *Corcamore, LLC v. SFM, LLC*, 978 F.3d 1298, 2020 USPQ2d 11277, at *6-7 (Fed. Cir. 2020), *cert. denied*, ___ U.S. ___ (2021).

Applicant uses and has applied to register the mark GET ORDAINED for, among other services, ecclesiastical services, namely, ordaining ministers to perform religious ceremonies.⁴⁸ Opposer is an Internet church and one of Applicant’s competitors providing ecclesiastical services, namely, ordination services directed to people “who want to perform wedding ceremonies for friends and family members.”⁴⁹ Opposer uses the phrase “get ordained” in its website copy, meta titles and

⁴⁷ Our decisions have previously analyzed the requirements of Sections 13 and 14 of the Trademark Act, 15 U.S.C. §§ 1063-64, under the rubric of “standing.” We now refer to this inquiry as entitlement to a statutory cause of action. Despite the change in nomenclature, our prior decisions and those of the Federal Circuit interpreting “standing” under §§ 1063 and 1064 remain applicable. See *Spanishtown Enters., Inc. v. Transcend Res., Inc.*, 2020 USPQ2d 11388, at *2 (TTAB 2020).

⁴⁸ Freeman Testimony Declaration, 62 TTABVUE 2-3 ¶ 7.

⁴⁹ King Rebuttal Deposition, 83 TTABVUE 7-8; King Testimony Deposition, 73 TTABVUE 9; Wall Testimony Deposition, 69 TTABVUE 17, 19-20.

descriptions, marketing materials, and key words in Google ads to promote its services.⁵⁰

Because Opposer is a competitor of Applicant and uses the phrase “get ordained” in offering and promoting its services, Opposer has established its entitlement to bring this statutory cause of action in connection with each of its asserted claims. *Books on Tape, Inc. v. Booktape Corp.*, 836 F.2d 519, 5 USPQ2d 1301, 1302 (Fed. Cir. 1987) (competitor has standing); *Alcatraz Media Inc. v. Chesapeake Marine Tours Inc.*, 107 USPQ2d 1750, 1760 (TTAB 2013), *aff’d mem.*, 565 Fed. Appx. 900 (Fed. Cir. 2014) (finding standing based on petitioner being a competitor and using a similar term); *Books on Tape, Inc. v. Holt*, 92 USPQ2d 1101, 1103 (TTAB 2009) (competitor has standing to bring a descriptiveness claim); *Eastman Kodak Co. v. Bell & Howell Document Mgmt. Prods. Co.*, 23 USPQ2d 1878, 1879-80 (TTAB 1992) (entitlement established where opposer was a competitor using one of applicant’s applied-for marks), *aff’d*, 994 F.2d 1569, 26 USPQ2d 1912 (Fed. Cir. 1993).

III. Evidence Regarding the Meaning and Use of “Get Ordained”

A. Dictionary Definitions

The record includes the following definitions for the words “get” and “ordain”:

1. Get: “To seek out and obtain”;⁵¹ “To obtain or come into possession”;⁵² and

⁵⁰ Yoshioka Testimony Deposition, 74 TTABVUE 20-22; King Testimony Deposition, 73 TTABVUE 111.

⁵¹ MERRIAM-WEBSTER, 40 TTABVUE 3; 66 TTABVUE 10.

⁵² THE AMERICAN HERITAGE DICTIONARY, 79 TTABVUE 27.

2. Ordain: “To invest officially with ministerial or priestly authority,” e.g. “was ordained as a priest[.]”⁵³

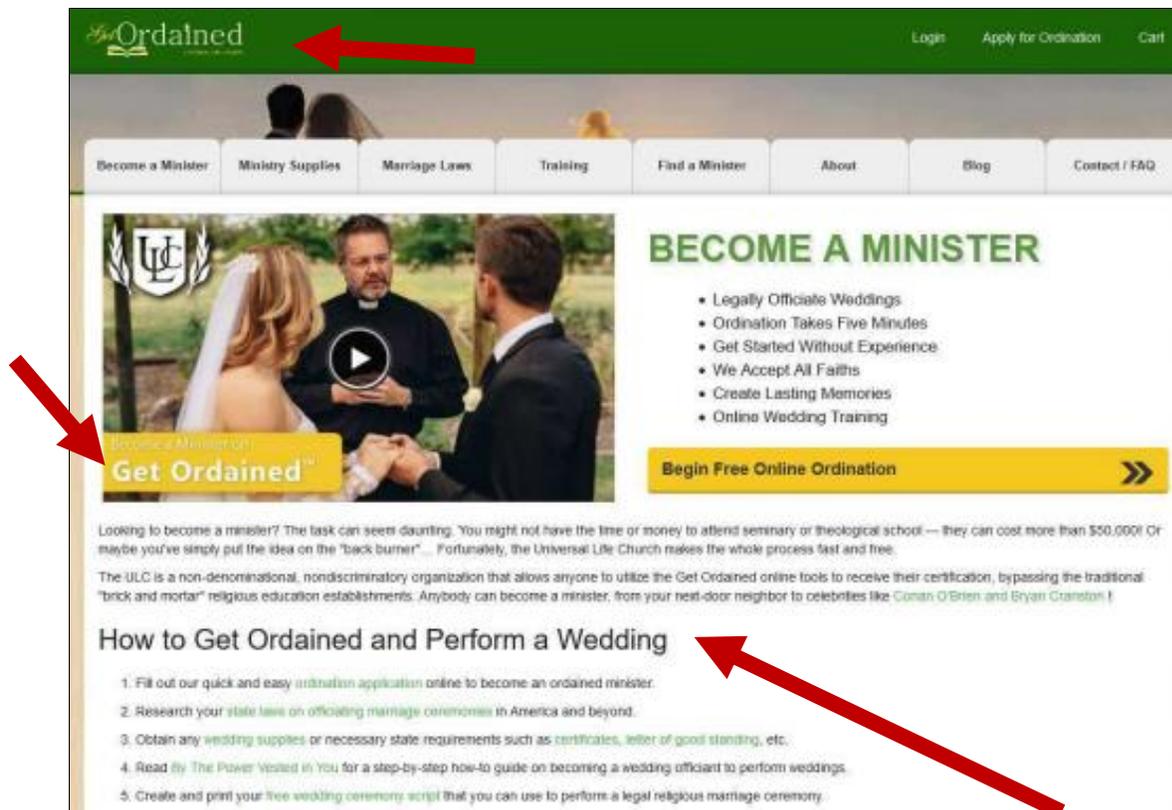
B. Use of “Get Ordained”⁵⁴

1. Applicant’s Use of “Get Ordained”

Applicant operates a number of websites on which it uses GET ORDAINED.

Representative screenshots are below.

a. Getordained.org:⁵⁵

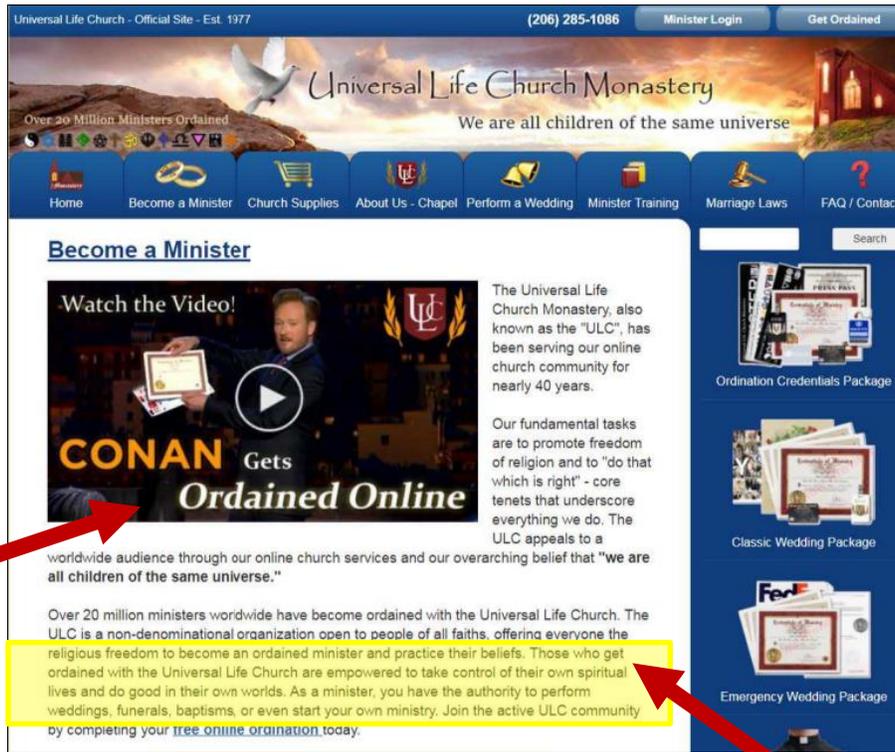


⁵³ MERRIAM-WEBSTER, 40 TTABVUE 4; *see also* THE AMERICAN HERITAGE DICTIONARY, 79 TTABVUE; DICTIONARY.COM, 66 TTABVUE 22.

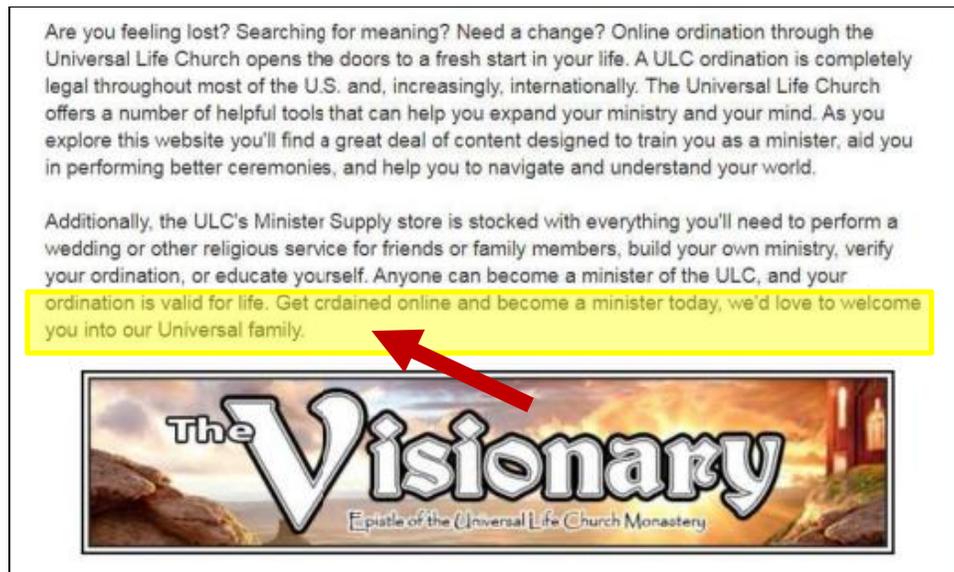
⁵⁴ Yellow highlighting and red arrows have been added by the Board to some of the Internet screenshots.

⁵⁵ Wozeniak Declaration, 64 TTABVUE 3, 11, ¶ 12 and Ex. A (website getordained.org “as of December 15, 2020”); *see also* Wozeniak Testimony Deposition, 70 TTABVUE 10, 15-16 (testifying that getordained.org is Applicant’s website).

b. Themonastery.org⁵⁶



and



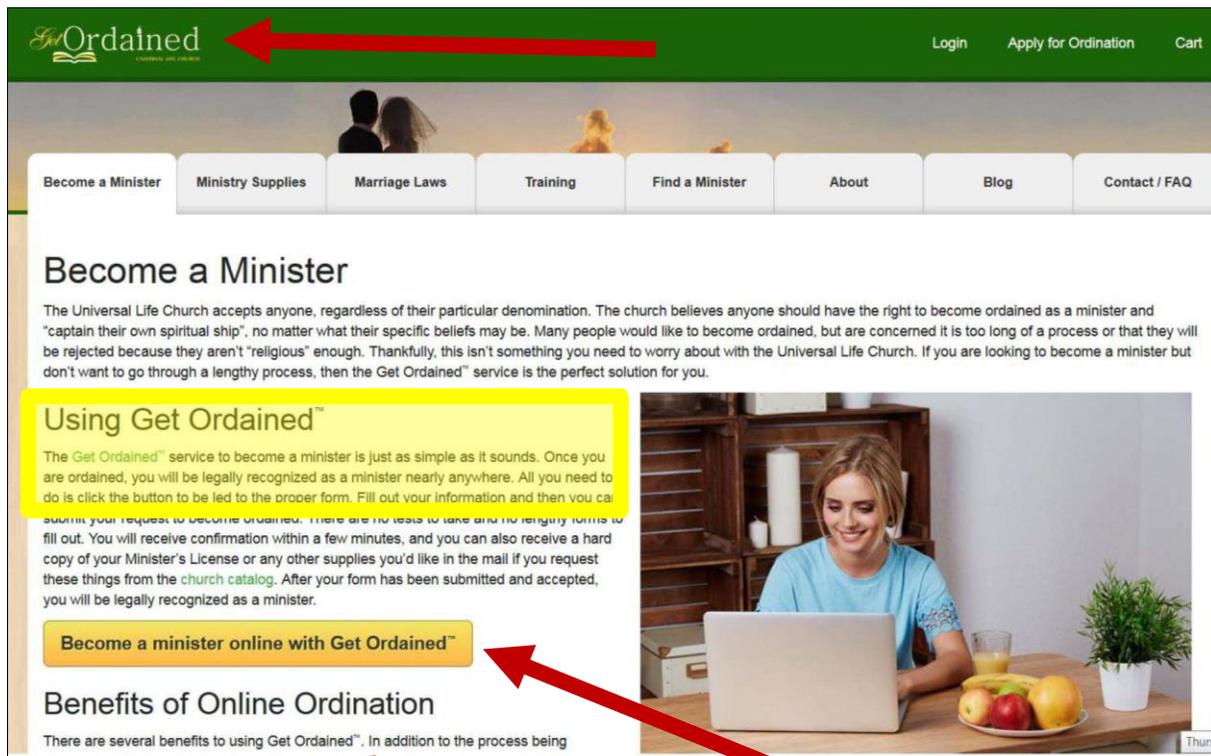
⁵⁶ 43 TTABVUE 82-83 (dated September 9, 2020); Goschie Testimony Deposition, 72 TTABVUE 91, 93; Wozeniak Testimony Deposition, 70 TTABVUE 10, 15-16 (testifying that themonastery.org is one of Applicant's websites).

c. Ulc.org⁵⁷

The screenshot displays the Universal Life Church website. At the top, there is a navigation bar with links for 'Login', 'Apply for Ordination', and 'Cart'. Below this is a header with the church's name and a logo. A secondary navigation bar includes links for 'Become a Minister', 'Minister Store', 'Minister Training', 'Wedding Laws', 'About the ULC', 'ULC Blog', and 'Contact'. The main content area features a large banner with a wedding photo and the text 'Become an Ordained Minister' and 'Get Ordained Online, Officiate A Wedding'. To the right of the banner is an 'Online Ordination Request' form with fields for 'Full Name', 'E-mail', 'Country' (set to 'United States'), 'State / Province / Region' (set to '-- Please Choose a Region --'), 'Password', and 'Password Confirm'. There are also checkboxes for 'I certify that I am 18 years of age or older' and 'Join our monthly newsletter'. A blue button labeled 'Get Ordained Instantly' is at the bottom of the form. Below the form is a section titled 'Notable ULC Ministers'. Two red arrows point to the 'Get Ordained Instantly' button and the 'Join our monthly newsletter' checkbox.

⁵⁷ 43 TTABVUE 75 (dated September 7, 2020); Wozeniak Testimony Deposition, 70 TTABVUE 10, 15-16 (testifying that ulc.org is one of Applicant's websites).

d. Applicant's specimen⁵⁸



2. Opposer's use of "Get Ordained"

The record includes the following screenshot from Twitter showing use of the hashtag #getordained by Opposer and third parties:⁵⁹

⁵⁸ April 28, 2017 Specimen at TSDR 5.

⁵⁹ 44 TTABVUE 89.

#getordained - Twitter Search / Twitter

The Hollywood Reporter @THR · Sep 17, 2018
Watch Glenn Weiss' live #Emmys proposal: "You wonder why I don't like to call you my girlfriend? Because I want to call you my wife"
thr.cm/YaQb72

2 1 3 1

Fr. Anthony Ferguson @FatherFerg · Nov 5, 2019
Spring semester class enrollment at the seminary involves extremely loud noises at 7AM.
It warms my heart that this is the last time I'll ever need to sign up for classes
#GetORDAINED

2 1 78 1

Jack Dylan @thisisjackdylan · Apr 10, 2015
Just got #Ordained. Nbd. #GetOrdained youtu.be/RTU8kPOj4I8

1 1 3 1

American Marriage Ministries @ammofficials · Mar 8, 2017
AMM believes that women can be ANYTHING including ordained ministers!
Happy International Women's Day! #internationalwomensday #getordained

1 1 2 1

Dylan Bruce @DylanBruce · Sep 18, 2017
.@YulVazquez I think I just figured out your new side hustle. #MidnightTexas
#getordained

2 9 63 1

In addition, Applicant introduced the following screenshot from Opposer’s website through the testimony of Mr. Yoshioka:⁶⁰



⁶⁰ 93 TTABVUE 73-74. Mr. Yoshioka testified that he could “not point” Opposer’s counsel “to the words ‘get ordained’ on this page” (93 TTABVUE 34) but the words are shown on the page twice (highlighted in yellow).

3. Universal Life Church Seminary's Use of "Get Ordained" (ulcseminary.org)⁶¹

9/9/2020 Become Ordained and Ordain Others | Universal Life Church

Home Contact Us Site Index



UNIVERSAL LIFE CHURCH SEMINARY
We Are One



About Us Ordination Store Free Mailings Seminary Ceremonies Chapel FAQs

STARTING A UNIVERSAL LIFE CHURCH

How To Become Ordained and Ordain Others



I know many of you have started your own church or ministry website. I'd like to give you the opportunity to offer free ordination on your own sites.

Below, I've included the code for you to put anywhere on your website. This will allow people to come to your site, input their information and immediately become ordained online, through the Universal Life Church. Once they put the information in, my program will automatically send their information to headquarters in Modesto, CA, checked for accuracy, then recorded in their official database.

You can put this code on any website and it will do the job. I'm really excited about the opportunity to offer this to you. If you have any problems with it, please let me know.

THE CODE STARTS HERE (but don't include these words):

```
<p><table width="32%" border="0"
cellspacing="1" cellpadding="0"><br>
<tr><br>
<td height="20" align="right"
valign="middle" class="big"><div
```

Submit

To get notified when someone gets ordained through your site, find the line that says: 'youremail here' and put your email address there instead. Make sure to leave Andre's line there so he gets notified and the ordination is recorded.

Then you can be sure to have the contact info of anyone ordained through your site. :)

HELP PEOPLE GET ORDAINED: I know that many people have asked me how they can ordain people on their own sites. They are ULC Ministers wanting to help people become ordained. Using this form, they can do just that.

HOW DO I GET ORDAINED?: On this page, you can fill out the ordination form to become an ordained minister. Fill out the form completely and correctly and



RE-ORDINATION: Welcome! This is a page for those who have been ordained before, but want to re-new your dedication or commitment to the ministry. Or if you're not sure that you're ordained and want to confirm it just in case.

ABOUT US: If you'd like to learn more about the Universal Life Church Seminary, how we started, where we came from and what we're about, please read our 'About Us' page and watch our videos to get all the details. For information about the split

Find us on Facebook

FAVORITES:

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- What States Require a Letter for weddings?
- OTHER ULC sites?
- ULC Toolbar
- How to Start A Church
- MINISTER TRAINING
 - HOW TO PERFORM WEDDINGS
 - HOW TO PERFORM FUNERALS
- Four Gospels Course

Featured Products:

⁶¹ 43 TTABVue 60. Opposer represents that Applicant operates this website, but this is not clear from the record.

4. Articles and Website Posts Using “Get Ordained”

The record includes a number of examples of “get ordained” used in articles and website posts discussing ordination, including:

- a. June 23, 2015 article on Bustle.com titled “How to Legally **Get Ordained** to Perform a Wedding”:⁶²
 - “OK, first thing’s first: there are a lot of different terms that fly around then it comes to who can officiate weddings, and how to **get ordained** yourself.”
 - “**Or get ordained** (if that’s cool with your state)[.]”
- b. July 14, 2020 Article on TheKnot.com: “How Long Does it Take to **Get Ordained**? The process varies depending on what organization you go through. ... Before **getting ordained**, find out whether the ordination will be for a life time or for a limited time.”⁶³
- c. September 9, 2020 screenshot of a blogpost on withjoy.com titled “How to **Get Ordained** in 6 Easy Steps” providing instructions for “**Getting Ordained** Online[.]”⁶⁴
- d. August 8, 2019 updated entry on Wikihow.com: “**Getting ordained** online is often as easy as signing up for an account and paying a small fee.... **Getting ordained** online offers an alternative to traditional ordinary routes.... **Getting ordained** online tends to be relatively inexpensive, and will allow you to perform weddings and other ceremonies.”⁶⁵
- e. January 14, 2018 post on weddingwire.com forum: “How to **get ordained** online[.]”⁶⁶

⁶² 40 TTABVUE 10-15.

⁶³ 40 TTABVUE 16-24.

⁶⁴ 40 TTABVUE 34-38.

⁶⁵ 40 TTABVUE 39-46.

⁶⁶ 41 TTABVUE 46.

- f. August 22, 2009 WASHINGTON POST article titled “A Turning Point On the Road to Priesthood”: “Here I am, about to **get ordained** with my brothers.”⁶⁷
- g. September 9, 2020 screenshot of an article on everafterguide.net titled “How to **Get Ordained** to Marry – Everything You Need to Know”: “So you want to **get ordained**. **Getting ordained** is basically making someone a priest or minister such that they can confer holy orders. Many people assume that they can **get ordained** online and perform their friends’ weddings.”⁶⁸
- h. June 22, 2015 post on pridezillas.com: “If a couple has a family member or a friend **get ordained** on the internet [or] if they hire an independent officiant, the possibilities are only limited by the Officiant’s knowledge of and ability to research wedding possibilities.”⁶⁹
- i. September 9, 2020 screenshot of a blogpost on yellowbirdwedding.com: “A couple of my friends in Buffalo, NY decided that they were ready to spend the rest of their lives together.... They asked me to **get ordained** and officiate for them.”⁷⁰
- j. August 1, 2017 article on northern-michiganweddingofficiants.com: “When I talk with new brides or grooms, there’s times I get the feeling the ceremony that makes their relationship legal and official is no big deal to them. This especially comes across when they say they have a friend who is a public speaker and she or he has decided to **get ordained** so they can conduct the wedding ceremony.”⁷¹
- k. Transcript of an October 15, 2015 interview on babydollweddings.com: “We did not just want to have anyone marry use, so we asked his father to **get ordained**.”⁷²
- l. June 29, 2020 FAQ’s on idahoweddingsdoneyourway.blogspot.com: “Why did I **get ordained** and how do I know if my ordination is legal if I did get it online? My son was getting married and we weren’t sure if

⁶⁷ 43 TTABVUE 313.

⁶⁸ 43 TTABVUE 338.

⁶⁹ 44 TTABVUE 56.

⁷⁰ 44 TTABVUE 62.

⁷¹ 44 TTABVUE 77.

⁷² 44 TTABVUE 96.

we were going to have someone available to perform the wedding. Just in case I went online and **got ordained**.”⁷³

m. January 13, 2017 blogpost on miltonridge.com: “Asking someone who is important to you and your future-spouse to lead the ceremony is both meaningful and budget savvy.... They can **get ordained** as a minister online.”⁷⁴

n. User comments on website ulcforum.net showing more than 20 uses of “**get ordained**.” Representative examples are below:⁷⁵

- “A few weeks after my brother’s passing I was reading something online when I saw an add [sic] to **get ordained** as a minister.” (January 17, 2017).
- “If you **get ordained** here you are accepted by all the sites except one, mentioned above.” (July 6, 2014).
- “There are people who **get ordained** on a lark or as a joke. This does not diminish the work of the ULC at all.” (June 3, 2012).
- “Do you get a number when you **get ordained**? You are not required to have a number assigned to you as a ULC minister. The ULC does not assign numbers to its ministers.” (January 29, 2012).
- “I am waiting on the package of the basic information materials to arrive and I still have some research to do but I decided to **get ordained** so that I could help perform Wiccan and Pagan handfasting ceremonies in my area (Northern VA).” (June 9, 2010).
- “Anyone can **get ordained** by the ULC just by asking, including people who think they must be clean shaven in order to be spiritually pure.” (November 6, 2009).
- “I have a buddy that wants to **get ordained** through the ulc and I was wondering if he could legally [sic] marry us after he is ordained through here?” (February 21, 2009).

⁷³ 44 TTABVUE 102.

⁷⁴ 44 TTABVUE 171.

⁷⁵ 43 TTABVUE 67-72. In its notice of reliance, Opposer identifies this as a website that Applicant operates, but this is not clear from the record.

IV. Failure to Function as a Mark

A. Applicable Law

“The Trade-Mark Act is not an act to register words but to register trademarks. Before there can be registrability, there must be a trademark (or a service mark) and, unless words have been so used, they cannot qualify for registration.” *In re Standard Oil Co.*, 275 F.2d 945, 125 USPQ 227, 229 (CCPA 1960). Section 45 of the Trademark Act defines a “service mark” as “any word, name, symbol, or device, or any combination thereof – (1) used by a person ... to identify and distinguish the services of one person, including a unique service, from the services of others and to indicate the source of the services, even if that source is unknown.” 15 U.S.C. § 1127. *See also In re Bose Corp.*, 546 F.2d 893, 192 USPQ 213, 216 (CCPA 1976) (“[T]he classic function of a trademark is to point out distinctively the origin of the goods to which it is attached”). “[N]ot every designation that is placed or used on or in connection with a product [or service] necessarily functions or is recognized as a trademark for said product [or service].” *American Velcro, Inc. v. Charles Mayer Studios, Inc.*, 177 USPQ 149, 154 (TTAB 1973).

Whether GET ORDAINED is capable of functioning as a mark for Applicant’s ecclesiastical and online retail store services depends on whether the relevant public, i.e. consumers and potential consumers of Applicant’s services, would perceive GET ORDAINED as identifying Applicant’s services and their source or origin. *See e.g., In re TracFone Wireless, Inc.*, 2019 USPQ2d 222983, at *1-2 (TTAB 2019) (“The key question is whether the asserted mark would be perceived as a source indicator for

Applicant's services."); *In re Phoseon Tech., Inc.*, 103 USPQ2d 1822, 1827 (TTAB 2012) (noting that the critical inquiry in determining whether a proposed mark functions as a trademark or service mark is the "commercial impression it makes on the relevant public (e.g., whether the term sought to be registered would be perceived as a mark identifying the source of the goods or [services] or merely as an informational phrase"); *In re Aerospace Optics, Inc.*, 78 USPQ2d 1861, 1862 (TTAB 2006) ("[T]he critical inquiry is whether the asserted mark would be perceived as a source indicator."); *In re Volvo Cars of North Am. Inc.*, 46 USPQ2d 1455, 1459 (TTAB 1998) ("A critical element in determining whether a term or phrase is a trademark is the impression the term or phrase makes on the relevant public.").

Slogans and other terms and phrases that are ordinarily used in a particular trade or industry will be understood as conveying the ordinary concept normally associated with them, rather than serving any source-indicating function. *In re Eagle Crest Inc.*, 96 USPQ2d 1227, 1229 (TTAB 2010); *see also In re Wal-Mart Stores, Inc.*, 129 USPQ2d 1148, 1149-50 (TTAB 2019) (noting that the Board, Federal Circuit and "other federal appeals courts, draw a distinction between words used to 'identify and distinguish' source, and words used in their ordinarily-understood meaning to convey information other than source-identification."). "The more commonly a phrase is used, the less likely that the public will use it to identify only one source and the less likely that it will be recognized by purchasers as a trademark." *In re Eagle Crest*, 96 USPQ2d at 1229 (TTAB 2010).

B. Analysis

The word “get” is defined as “to seek out and obtain.”⁷⁶ “Ordain” means “to invest officially with ministerial or priestly authority.”⁷⁷ Together, the words GET ORDAINED mean to obtain ministerial or priestly authority, to become invested with ministerial or priestly authority, or more simply, to become a minister.

As shown in Section III.B above, the record includes numerous examples of third parties using “get ordained” precisely to convey this ordinary meaning (e.g., “We did not just want to have anyone marry us, so we asked his father to **get ordained**”⁷⁸ and “Here I am, about to **get ordained** with my brothers.”⁷⁹). Indeed, in response to an interrogatory, Applicant acknowledged that it “is generally aware that third parties may use the term ‘get ordained’ when discussing the act of becoming a minister or wedding officiant.”⁸⁰

Opposer and Applicant also use “get ordained” to convey its ordinary meaning. For example, Opposer has urged people to “**Get ordained** today to perform marriage for friends and family” explaining that “When you **get ordained** you will have the authority to perform marriage.”⁸¹

⁷⁶ 40 TTABVUE 3 and 66 TTABVUE 9-16 (MERRIAM-WEBSTER); 79 TTABVUE 27 (THE AMERICAN HERITAGE DICTIONARY).

⁷⁷ 40 TTABVUE 4 (MERRIAM-WEBSTER); 66 TTABVUE 22-28 (DICTIONARY.COM); 79 TTABVUE 28 (THE AMERICAN HERITAGE DICTIONARY).

⁷⁸ 44 TTABVUE 96 (transcript of an October 15, 2015 interview on babydollweddings.com).

⁷⁹ 43 TTABVUE 313 (August 22, 2009 WASHINGTON POST article).

⁸⁰ 43 TTABVUE 108 (response to Interrogatory 20).

⁸¹ 93 TTABVUE 73-74.

Similarly, Applicant uses and has used the phrase highlighting instructions on “How to **Get Ordained** and Perform a Wedding”⁸² and as an advertising call to action:

“**Get ordained** online and become a minister today, we’d love to welcome you into our Universal family.”⁸³

“**Get Ordained** Online, Officiate a Wedding”;⁸⁴ and

“**Get Ordained** Instantly[.]”⁸⁵

Applicant’s own use of “Get Ordained” to convey the ordinarily-understood meaning of the words, i.e. “become ordained” or “become a minister,” is strong evidence that Applicant’s consumers will perceive “get ordained” not as a service mark but rather for the commonly understood meaning of the words. *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978) (“Evidence of the context in which a mark is used ... in advertising material ... is probative of the reaction of prospective purchasers to the mark.”); *In re Aerospace Optics*, 78 USPQ2d at 1862 (“To be a mark, the term must be used in a manner calculated to project to purchasers or potential purchasers a single source or origin for the goods or services[.]”); *In re Gilbert Eiseman, P.C.*, 220 USPQ 89, 90 (TTAB 1983) (“It is established that when a designation or slogan imparts an impression of conveying advertising or promotional

⁸² Wozeniak Declaration, 64 TTABVUE 11.

⁸³ 43 TTABVUE 83.

⁸⁴ *Id.* at 75.

⁸⁵ *Id.*

information rather than of distinguishing or identifying the source of goods or services, it cannot be the basis for registration.”).

The fact that, in some instances, Applicant uses the TM symbol to identify GET ORDAINED as a trademark and uses the phrase prominently in a traditional trademark manner does not transform the phrase into a service mark. *See, e.g., In re Aerospace Optics*, 78 USPQ2d at 1864 (“The use of the TM symbol on the inner flap location of one specimen does not change the commercial impression of the applied-for mark, which as used in the specimen only informs the consumer of the features of the pushbutton switches.”); *Remington Prods. Inc.*, 3 USPQ2d 1714, 1715 (TTAB 1987) (“[T]he mere fact that applicant’s slogan appears on the specimens, even separate and apart from any other indicia which appear on them, does not make it a trademark. Mere intent that a term function as a trademark is not enough in and of itself, any more than attachment of the trademark symbol would be, to make a term a trademark”); *In re Royal Viking Line A/S*, 216 USPQ 795, 797 (TTAB 1982) (citing *In re Singer Mfg. Co.*, 255 F.2d 939, 118 USPQ 310, 312 (CCPA 1958) (“The important question is not how readily the mark will be noticed, but whether, when it is noticed, it will be understood as indicating origin of the goods.”). Applicant’s intent that the phrase function as a service mark is irrelevant. *In re Hulting*, 107 USPQ2d 1175, 1180 (TTAB 2013).

The third-party registrations for GET-formative marks that Applicant introduced also do not conclusively rebut the evidence that GET ORDAINED fails to function as a service mark. The Board must decide each case on its own merits. In this case, the

crucial fact is how GET ORDAINED is used in the relevant industry. Even if some of the prior registrations had characteristics similar to Applicant's use of GET ORDAINED, the USPTO's allowance of these registrations does not bind the Board. *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001).

Because "get ordained" is so commonly used in the field of ministerial ordination, including by Applicant, for its ordinary meaning, i.e., "become ordained" or "become a minister," consumers will not perceive the phrase as a source indicator pointing uniquely to Applicant. Rather, consumers will perceive the words as conveying their ordinary meaning. *See In re Standard Oil* 125 USPQ at 229 ("It must be assumed that the ordinary customer reading the advertisements displayed by an automobile service station would take the words [guaranteed starting] at their ordinary meaning rather than read into them some special meaning distinguishing the services advertised from similar services of other station operators.").

Accordingly, Opposer's failure to function claim is sustained.

V. Mere Descriptiveness

We also address Opposer's additional claim that Applicant's mark is merely descriptive and has not acquired distinctiveness.

A. Applicable Law

In the absence of acquired distinctiveness, Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), prohibits registration of a mark that, when used on or in connection with an applicant's goods or services, is merely descriptive of them. A term is merely descriptive of goods or services if it conveys an immediate idea of a quality,

characteristic, feature, function, purpose or use of the goods or services. 15 U.S.C. § 1052; *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012) (“[A] mark is merely descriptive if it “conveys information regarding a function, or purpose, or use of the goods.”) (citing *In re Abcor Dev. Corp.*, 200 USPQ at 217). “A mark need not recite each feature of the relevant goods or services in detail to be descriptive, it need only describe a single feature or attribute.” *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012). In addition, a designation is descriptive “if the mark is descriptive of any of the services for which registration is sought.” *Id.* (quoting *Stereotaxis, Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1088 (Fed. Cir. 2005)).

Whether a term is merely descriptive is determined not in the abstract, but “in relation to the particular goods [or services] for which registration is sought, the context in which it is being used, and the possible significance that the term would have to the average purchaser of the goods [or services] because of the manner of its use or intended use.” *In re Chamber of Commerce*, 102 USPQ2d at 1219 (quoting *In re Bayer A.G.*, 448 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)); *In re Stereotaxis, Inc.*, 77 USPQ2d at 1090 (quoting *In re Bed & Breakfast Registry*, 791 F.2d 157, 160 (Fed. Cir. 1986) (“Whether a mark is merely descriptive or not is ‘determined from the viewpoint of the relevant purchasing public.’”)). The question is whether someone who knows the goods or services will understand the term to convey

information about them.⁸⁶ *DuoProSS Meditech*, 103 USPQ2d at 1757; *In re Omniome, Inc.*, 2020 USPQ2d 3222, at *3 (TTAB 2019) (“That a term has different meanings in different contexts is not controlling.”).

B. Analysis

The evidence discussed in Section III.B above, establishes that the phrase “get ordained” is commonly used and ordinarily understood to mean “become ordained” or “become a minister.”⁸⁷ *In re N.C. Lottery*, 866 F.3d 1363, 123 USPQ2d 1707, 1710 (Fed. Cir. 2017) (evidence of descriptiveness may come from websites, publications, and applicant’s own specimens); *In re Bayer*, 82 USPQ2d at 1831 (evidence of descriptiveness may come from sources including dictionary definitions and newspapers). Indeed, Applicant uses “get ordained” descriptively to promote its own services.

Consumers use Applicant’s “ecclesiastical services, namely, ordaining ministers to perform religious ceremonies” so they can “get ordained.” And Applicant’s online retail store services feature products that consumers need both to prepare to “get ordained” and once they “get ordained,” namely books, hand-outs, workbooks, manuals, brochures, and newsletters in the fields of religion, spirituality, marriage and law; clergy shirts, stoles, badges, musical sound recordings, aromatic oil and

⁸⁶ For this reason, Applicant’s argument that the words “get” and “ordained” and the combined phrase “get ordained” have a number of different meanings in different contexts is irrelevant. 95 TTABVue 16-17, 27-28.

⁸⁷ This is not a situation where two or more merely descriptive terms are combined to form a descriptive composite mark. The word “get” by itself is not merely descriptive of Applicant’s services, but when it is combined with the word “ordained” to form GET ORDAINED, the phrase immediately describes a purpose, use and feature of Applicant’s services.

portfolios. Accordingly, “get ordained” immediately describes a purpose, use, and feature of Applicant’s services.⁸⁸

Applicant raises several arguments for why GET ORDAINED is not merely descriptive of its services: (1) there is no dictionary definition for the combined words “get ordained”;⁸⁹ (2) GET ORDAINED has “multiple potential meanings in the context of religious services, and therefore does not directly describe [Applicant’s] services”;⁹⁰ (3) in testimony, Opposer’s Executive Director, Lewis King, “use[d] the GET ORDAINED trademark to refer to a particular entity[,]” namely, Applicant, showing that it serves as a source identifier;⁹¹ (4) the “PTO regularly registered imperative phrases in the form ‘GET ____’ as trademarks” showing that “this form of mark is not [descriptive], but is in fact inherently distinctive” (emphasis omitted);⁹² and (5) “before initiating this opposition proceeding, [Opposer] regularly used ‘apply for ordination,’ ‘become an AMM minster,’ and other phrases without any supported ‘competitive need’ to use [Applicant’s] GET ORDAINED trademark.”⁹³

⁸⁸ Applicant’s argument that GET ORDAINED is not descriptive because it “does not describe a characteristic of the applied for services” but rather refers to “an act or experience of the individual” (95 TTABVUE 8, 30) ignores the fact that a mark is merely descriptive if it describes a use or purpose of the services as is the case here.

⁸⁹ 95 TTABVUE 16.

⁹⁰ 95 TTABVUE 7-8. Applicant asserts that “in the spiritual context, any non-trademark significance of the phrase ‘GET ORDAINED’ refers to a prospective minister’s ‘recognition of a calling or motivation to fulfill a spiritual purpose.’” 95 TTABVUE 17 (quoting George Freeman’s testimony at 62 TTABVUE 4 (¶¶ 18-19)).

⁹¹ 95 TTABVUE 25.

⁹² 95 TTABVUE 21.

⁹³ 95 TTABVUE 17.

“[T]he fact that there is no dictionary definition for the combined wording [GET ORDAINED] or that there may be are other uses that may not directly support a descriptiveness finding is not dispositive.” *In re Omniome*, 2020 USPQ2d 3222, at *11. Nor is the fact that Mr. King may have made an off-hand reference to GET ORDAINED in a source identifying manner. In assessing Opposer’s descriptiveness claim, we are concerned with the perception of the relevant purchasing public. *In re N.C. Lottery*, 123 USPQ2d at 1709 (“[T]he TTAB ‘must consider a mark in its commercial context to determine the public’s perception.’”). As discussed above, the evidence establishes that relevant consumers will understand “get ordained” as synonymous with “become ordained” or “become a minister” and this meaning immediately describes Applicant’s services. *See Sausser Summers, PC*, 2021 USPQ2d 618, at *12 (TTAB 2021) (“The immediate description of the key feature or attribute of Applicant’s legal services by the proposed mark ONLINETRADEMARKATTORNEYS.COM is mirrored in the generic or highly descriptive third-party uses of the phrase ‘online trademark attorney(s)’ to describe business models similar to that of Applicant.”).

As to the third-party registered marks, as explained, we are bound to decide this case on the record before us and that record demonstrates that GET ORDAINED is merely descriptive of Applicant’s services. *In re Nett Designs*, 57 USPQ2d at 1566.

Finally, whether there are alternative ways to describe Applicant’s services, and whether Opposer has used such alternative descriptors, is not dispositive of whether the mark is merely descriptive. “The correct test is whether the phrase forthwith

conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods [or services].” *In re Fat Boys Water Sports, LLC*, 118 USPQ2d 1511, 1514 (TTAB 2016); *see also In re Walker Mfg. Co.*, 359 F.2d 474, 149 USPQ 528, 530 (CCPA 1966) (“The question . . . is not whether the Board or others may or would utilize ‘CHAMBERED PIPE’ to describe applicant’s goods, but whether this designation does, in fact, describe such goods. That there are other words which others may employ to describe or define applicant’s goods does not, in any way, lessen the descriptive character of the words ‘CHAMBERED PIPE.’ . . .”) (quoting Board decision with approval). “Get ordained” is a less formal way of saying “become ordained” or “become a minister” and immediately describes a use, purpose or feature of Applicant’s ecclesiastical and online retail store services.

On the record before us, consisting of dictionary definitions, widespread third-party use of “get ordained,” and Applicant’s own use of “get ordained” for its commonly understood meaning, we find that GET ORDAINED is highly descriptive of Applicant’s ecclesiastical services used to “get ordained” and Applicant’s online retail store services featuring products used to prepare for “getting ordained” and used after “getting ordained.” *In re Sausser Summers PC*, 2021 USPQ2d 618, at *12 (finding onlinetrademarkattorneys.com “highly descriptive” of “legal services”); *In re Guaranteed Rate, Inc.*, 2020 USPQ2d 10869, at *3 (TTAB 2020) (third-party uses of the terms “guaranteed rate,” “guaranteed mortgage rate,” and “guaranteed interest rate” established that claimed mark GUARANTEED RATE was highly descriptive of mortgage-related services); *In re Virtual Indep. Paralegals*, 2019 USPQ2d 111512, at

*11 (TTAB 2019) (combination of descriptive terms “virtual,” “independent,” and “paralegals” in claimed VIRTUAL INDEPENDENT PARALEGALS mark for paralegal services made mark “highly descriptive of those services”).

We next consider Applicant’s argument that GET ORDAINED has acquired distinctiveness for Applicant’s services.⁹⁴ “Under Section 2(f) of the Trademark Act, matter that is merely descriptive under Section 2(e)(1) may nonetheless be registered on the Principal Register if it “has become distinctive of the applicant’s goods [or services] in commerce.” *In re Virtual Indep. Paralegals*, 2019 USPQ2d 111512, at *10. “Acquired distinctiveness is generally understood to mean an acquired ‘mental association in buyers’ minds between the alleged mark and a single source of the product.” *Apollo Med. Extrusion Techs., Inc. v. Med. Extrusion Techs., Inc.*, 123 USPQ2d 1844, 1848 (TTAB 2017) (2 MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 15:5 (4th ed., June 2017 update)).

Applicant bears the burden of proving acquired distinctiveness. *In re La. Fish Fry Prods., Ltd.*, 797 F.3d 1332, 116 USPQ2d 1262, 1265 (Fed. Cir. 2015). Because we have found that GET ORDAINED is highly descriptive of Applicant’s services, Applicant’s burden “is commensurately high.” *In re Virtual Indep. Paralegals*, 2019

⁹⁴ In its trial brief, Opposer asserts that the Board should not consider Applicant’s evidence of acquired distinctiveness because Applicant did not plead this as an affirmative defense. 88 TTABVUE 42. In pretrial orders, the Board indicated that acquired distinctiveness had been pleaded. Opposer did not request reconsideration of the Board’s orders and, during the proceeding, treated acquired distinctiveness as an issue in the case arguing it on summary judgment and introducing relevant evidence in its case-in-chief. See 21 TTABVUE 7-8 (Opposer’s summary judgment brief) and 39 TTABVUE 5-11 (Opposer’s notice of reliance). In these circumstances, Opposer will not be prejudiced if we consider Applicant’s evidence of acquired distinctiveness but it would be inequitable to Applicant to exclude the evidence. Accordingly, we have considered it.

USPQ2d 111512, at *11; *see also In re Sausser Summers, PC*, 2021 USPQ2d 618, at *13; *In re Yarnell Ice Cream, LLC*, 2019 USPQ2d 265039, at *9 (TTAB 2019) (“The Federal Circuit has long held that the applicant’s burden of showing acquired distinctiveness increases with the level of descriptiveness; a more descriptive term requires more evidence of secondary meaning.” (quoting *Royal Crown Cola Co. v. Coca-Cola Co.*, 892 F.3d 1358, 127 USPQ2d 1041, 1047 (Fed. Cir. 2018) (quoting *In re Steelbuilding.com*, 415 F.3d 1293, 75 USPQ2d 1420, 1424 (Fed. Cir. 2005))).

“To show that a mark has acquired distinctiveness, an applicant must demonstrate that the relevant public understands the primary significance of the mark as identifying the source of a product or service rather than the product or service itself.” *Steelbuilding.com*, 75 USPQ2d at 1422. We base our determination as to whether GET ORDAINED has acquired distinctiveness on the evidence as a whole.

The considerations to be assessed in determining whether a designation has acquired distinctiveness can be described by the following six factors: (1) association of the trade[mark] with a particular source by actual purchasers (typically measured by consumer surveys); (2) length, degree, and exclusivity of use; (3) amount and manner of advertising; (4) amount of sales and number of customers; (5) intentional copying; and (6) unsolicited media coverage of the product embodying the mark . . . All six factors are to be weighed together in determining the existence of secondary meaning.

In re Snowizard, Inc., 129 USPQ2d 1001, 1005 (TTAB 2018) (quoting *Converse, Inc. v. Int’l Trade Comm’n*, 907 F.3d 1361, 128 USPQ2d 1538, 1546 (Fed. Cir. 2018)); *see also In re Sausser Summers, PC*, 2021 USPQ2d 618, at *6 (applying these considerations to determine whether proposed standard character mark ONLINETRADEMARKATTORNEYS.COM had acquired distinctiveness for legal

services); *In re Guaranteed Rate, Inc.*, 2020 USPQ2d 10869, at * 2-3 (applying these considerations to determine whether phrase GUARANTEED RATE had acquired distinctiveness for financial and mortgage services). No single factor is determinative; we weigh all of the factors for which there is record evidence. *In re Sausser Summers, PC*, 2021 USPQ2d 618, at *6; *In re Virtual Indep. Paralegals*, 2019 USPQ2d 111512, at *11.

Applicant has not presented direct evidence of acquired distinctiveness such as a consumer survey or customer declarations, but rather relies on circumstantial evidence regarding its length of use, advertising expenses, sales and number of users to support that GET ORDAINED has acquired distinctiveness for Applicant's services. The record shows that Applicant has provided ecclesiastical services through the getordained.org website "since prior to 2011";⁹⁵ that Applicant "has continuously and prominently displayed the GET ORDAINED trademark in the header and home page, and every sub-page" of the getordained.org website since 2011 and on its online store since 2016;⁹⁶ and Applicant "has provided the applied-for services under the GET ORDAINED trademark to hundreds of thousands of ministers, spent nearly \$1 million in advertising under the GET ORDAINED mark, and completed over \$10 million in sales through its online store services offered under the mark."⁹⁷

⁹⁵ Freeman Declaration, 62 TTABVUE 3, ¶ 8.

⁹⁶ Freeman Declaration, 62 TTABVUE 3, ¶¶ 9.

⁹⁷ Applicant's Brief, 95 TTABVUE 8, 30-31 (citing Wozeniak Declaration, 63 TTABVUE (confidential)). Although this testimony was filed under seal, Applicant waived the confidentiality designation because it included this information in its publicly-filed brief.

Ten years of use is a somewhat lengthy period but is not particularly persuasive given that GET ORDAINED is highly descriptive and in widespread use in the industry for its common, descriptive meaning, including by Applicant itself (e.g. providing instructions on getordained.org on “How to Get Ordained and Perform a Wedding”).⁹⁸ See *Target Brands v. Hughes*, 85 USPQ2d 1676, 1681 (TTAB 2007) (fourteen years of use “not necessarily conclusive or persuasive on the Section 2(f) showing” for “highly descriptive” mark; evidence showed extensive third-party use of designation sought to be registered); see also *In re La. Fish Fry Prods.*, 116 USPQ2d at 1265 (“[p]articularly for a mark that is as highly descriptive like FISH FRY PRODUCTS, the Board was within its discretion not to accept Louisiana Fish Fry’s alleged five years of substantially exclusive and continuous use as prima facie evidence of acquired distinctiveness.”); *Apollo Med. Extrusion Techs.*, 123 USPQ2d at 1855 (length of use outweighed by highly descriptive nature of designation and lack of direct evidence of consumer association).

Applicant’s total advertising expenses of nearly \$1 million is modest, at best, and Applicant’s sales revenue and number of consumers “are not so impressive as to elevate Applicant’s highly descriptive designation to the status of a distinctive mark” in the absence of information regarding Applicant’s market share or other evidence providing sufficient context in the trade. *Target Brands v. Hughes*, 85 USPQ2d at 1681 (holding that it is difficult “to accurately gauge the level of [sales] success . . . in the absence of additional information such as applicant’s market share or how

⁹⁸ Wozeniak Declaration, 64 TTABVUE 11.

[applicant's] product ranks in terms of sales in the trade"); *see also In re MK Diamond Prods., Inc.* 2020 USPQ2d 10882, at *23 (TTAB 2020) (finding lack of industry context for Applicant's unit sales figures diminished probative value of the evidence). Even assuming that Applicant's sales and advertising activities are substantial in the industry, "[i]t is well established that compelling sales and advertising figures do not always amount to a finding of acquired distinctiveness." *Kohler Co. v. Honda Giken Kogyo K.K.*, 125 USPQ2d 1468, 1506 (TTAB 2017) (quoting *Stuart Spector Designs Ltd. v. Fender Musical Instruments Corp.*, 94 USPQ2d 1549, 1554 (TTAB 2009)). Applicant's sales and users of its services may simply reflect the popularity of its services, rather than recognition of its applied-for mark. *Target Brands v. Hughes*, 85 USPQ2d at 1681.

We also are not persuaded by Applicant's argument that "third party uses of the phrase 'GET ORDAINED' in some manner or context do not necessarily detract from a finding of secondary meaning, because ULC Monastery was substantially exclusive in its use of the phrase "GET ORDAINED" as a trademark."⁹⁹ Third-party use need not be of a trademark nature to interfere with a claim of "substantially exclusive" use under Trademark Act Section 2(f). *See Target Brands v. Hughes*, 85 USPQ2d at 1682 (finding "cumulative effect" of third-party descriptive use "so extensive that applicant's use fails to qualify as 'substantially exclusive' as required under Section 2(f).").

⁹⁹ 95 TTABVUE 32.

Considering all of the evidence as a whole, we find that Applicant has failed to meet its burden of establishing that GET ORDAINED has acquired distinctiveness as a source identifier for Applicant's services. Opposer's claim that Applicant's mark is merely descriptive is sustained.

VI. Conclusion

Opposer has proven its entitlement to bring a statutory cause of action and that GET ORDAINED fails to function as a mark for Applicant's services. Opposer has also established that GET ORDAINED is merely descriptive of Applicant's services and Applicant has failed to prove that GET ORDAINED has acquired distinctiveness as a mark. We do not reach Opposer's claim that GET ORDAINED is generic for Applicant's services.

Decision: The opposition is **sustained** on grounds that GET ORDAINED fails to function as a mark and is merely descriptive without proof of acquired distinctiveness.